

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

James Kevin Kergil,)
Petitioner)
)
v.)
)
United States of America,)
Respondent.)
)

Case No. 12-cr-00152-CM

**DEFENDANT JAMES KEVIN KERGIL'S MOTION FOR RECONSIDERATION
PURSUANT TO LOCAL RULE 49.1(d)**

NOW COMES James Kevin Kergil, the Defendant in the above-captioned case to petition this Honorable Court to reconsider its August 18, 2017 decision pursuant to Local Criminal Rule 49.1(d), concerning my motion pursuant to 18 U.S.C. §3582 to reduce my sentence because of the changes in the Sentencing Guidelines concerning the amount of loss in "White-Collar" crimes (Amendment 792), and my role as a minor player in the "*Binday*" scheme (Amendment 794).

PRELIMINARY STATEMENT

First and foremost, I want to thank the Court for ruling on my motions and ordering the government to respond to my 2255 Petition. My fear was that my motions had been lost in the *Binday* shuffle. As the government noted, Mr. Binday is up to his seventh or eighth attorney in this case, while I have had only one and I now am submitting these motions *pro se*. Second, I did not receive notice of the Court's decision until this week and I realize there is a 14 day limit on Local Rule 49.1(d), which is why I am having friends outside of the prison send this in because there is a big inspection happening at Canaan and I am currently unable to enter our unit.

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I. POINTS OVERLOOKED BY THE COURT

Judge Lynch, in writing for the Second Circuit, makes it clear that the money or property sought by Bindow was the commissions issued on the policies, and Judge Lynch also makes it clear if the *Bindow* scheme was just getting the carriers to issue policies they might not normally issue, that would not be mail or wire fraud:

“Misrepresentations amounting only to a deceit are insufficient” to support conviction for mail or wire fraud because “the deceit must be coupled with a contemplated harm to the victim.” *Starr*, 816 F.2d at 98. “Where the false representations are directed to the quality, adequacy or price of the goods themselves, the fraudulent intent is apparent because the victim is made to bargain without facts obviously essential in deciding whether to enter the bargain.” *Binday* at 578.

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Petitioner *Pro Se*
Incarcerated Inmate
FPC Canaan
P.O. Box 200
Waymart, PA 18472

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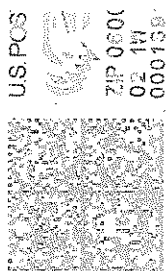
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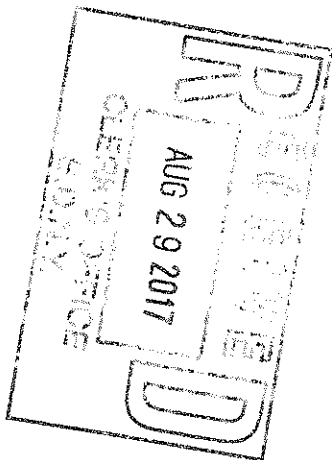
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CFM Docket



Clerk of the Court
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

USDP3
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